

Richard M. Garbarini (RG 5496)

GARBARINI FITZGERALD P.C.

250 Park Avenue

7th Floor

New York, New York 10177

Telephone: (212) 300-5358

Facsimile: (347) 218-9478

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
LARRY G. PHILPOT,

Index No.: 16-cv-26

Plaintiff,

**COMPLAINT AND JURY DEMAND
FOR DAMAGES FOR COPYRIGHT
INFRINGEMENT**

v.

AUTHOR'S GUILD, INC. and LAW STREET
MEDIA, LLC,

Defendants.

-----X

Plaintiff LARRY G. PHILPOT, by and through his attorneys at GARBARINI FITZGERALD P.C., brings this Complaint and Jury Demand against Defendants AUTHOR'S GUILD, INC. and LAW STREET MEDIA, LLC based on copyright infringement pursuant to the Copyright Act and Copyright Revisions Act, 17 U.S.C. §§ 101 *et seq.* (the "Copyright Act" or "Act").

NATURE OF THE ACTION

1. Defendants AUTHOR'S GUILD, INC. and LAW STREET MEDIA, LLC operate a website located at <www.lawstretmedia.com> (the "Subject Website"). The website domain name was registered by Defendant AUTHOR'S GUILD INC.

2. Defendants, without license or permission of any kind, impermissibly copied and distributed Plaintiff's copyrighted photograph of Ted Nugent through their website

<www.lawstreetmedia.com>. Defendants did not even have the decency to attribute the photograph to Plaintiff.

3. Even after Defendant LAW STREET was notified of the infringing use, it continued to maintain the copyrighted photograph on its website.

JURISDICTION AND VENUE

4. The jurisdiction of this Court is based upon 28 U.S.C. § 1331 in that this controversy arises under the Copyright Act and Copyright Revision Act of 1976 (17 U.S.C. § 101 et seq.).

5. Plaintiff has the right to bring the within action pursuant to 17 U.S.C. § 501(b).

6. The subject photograph was registered with the United States Copyright Office prior to the infringement by Defendants.

7. Personal jurisdiction over Defendants is proper in this Court on the ground that Defendants maintain a headquarters or otherwise reside in New York, NY.

8. The Court has personal jurisdiction over Defendants pursuant to CPLR § 302 (New York's long-arm statute) due to their continuous and systematic business activities within New York as described below.

9. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 (b) and (c).

10. Copies of the certificate issued by the U.S. Copyright Office are annexed incorporated hereto respectively as **Exhibit A**.

PARTIES

11. Plaintiff LARRY G. PHILPOT (“PHILPOT”) is a professional photographer who has achieved significant acclaim as a photographer for concert events held throughout the United States. PHILPOT resides in Indianapolis, Indiana.

12. Upon information and belief, Defendant AUTHOR’S GUILD, INC. (AUTHOR’S) is a New York corporation with a headquarters located at 31 East 32nd Street, 7th Floor, New York, NY 10016.

13. Upon information and belief, LAW STREET MEDIA, LLC is a media corporation with a headquarters located at 401 Park Avenue South New York, New York 10016.

FACTS COMMON TO ALL COUNTS

14. Plaintiff is a well-known photographer and earns a living licensing his photographs to businesses and musicians. Some examples of Plaintiff’s customers are Forbes, AOL, AXS-TV, Berkshire Hathaway, KISS, John Mellencamp, and Willie Nelson.

15. On July 31, 2013, Larry Philpot, a United States citizen, took a photograph of entertainer Ted Nugent in performance in Indianapolis, IN. The photograph is an original work that was registered for copyright with the United States Copyright Office on August 15, 2013 Certificate Number VAu 1-164-624 (the “Copyrighted Photograph”).

16. Defendants own and operate a website found at <www.lawstreetmedia.com> (“Subject Website”).

17. While Defendant LAW STREET MEDIA, LLC operates the Subject Website, Defendant AUTHOR’S GUILD registered and owns the website.

18. Ironically, Defendant Author’s Guild has touted itself as a champion for copyright enforcement, taking Google to the United States Supreme Court on the subject.

19. On or about January 7, 2014, Defendants posted an article titled “*The Future of America’s Surprising, Unexpected, and Potentially Horrifying Presidential Picks for 2016*”. That article is still live and can be found at <<http://lawstreetmedia.com/news/headlines/the-future-of-america-5-surprising-unexpected-and-potentially-horrifying-presidential-picks-for-2016>>.

20. Included in that article was Plaintiff’s copyrighted photograph, posted with no attribution. (Attached as **Exhibit B**).

21. Defendants also used Plaintiff’s Copyrighted Photograph on at least two occasions, in separate articles.

22. Defendant LAW STREET was notified by letter that it was violating Plaintiff’s exclusive rights to the Copyrighted Photograph.

23. LAW STREET elected to ignore the request and continued to display and otherwise disseminate the Copyrighted Photograph.

FIRST CLAIM FOR RELIEF COPYRIGHT INFRINGEMENT

24. Plaintiff incorporates the allegations contained in the preceding paragraphs as if set forth at length here.

25. As a general proposition, a copyright confers on the owner the exclusive right to reproduce the copyrighted work.

26. Absent a license from the copyright owner, which the owner is free to grant or deny, reproduction of the work by another constitutes copyright infringement.

27. Defendants have, without license from Plaintiff, reproduced and/or publicly distributed the Copyrighted Photograph.

28. It cannot be disputed that Plaintiff has valid, registered copyrights, and that Defendant has reproduced and displayed the Copyrighted Photographs without a license, thus infringing Plaintiff's rights under the Copyright Act. Irreparable injury is presumed here as Plaintiff has established a *prima facie* case of copyright infringement.

29. Even after Defendants were put on notice that it had no license or authority, Defendants elected to continue to reproduce and display and/or distribute Plaintiff's Copyrighted Photograph.

30. The making or the distribution, or both, of the photographs associated with the Copyright Registrations without attribution or license is actionable as acts of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506 and 509.

31. Defendants' predatory conduct was clearly intentional within the meaning of 504(c)(2) for purposes of enhancing statutory damages. Defendants knew their actions constituted an infringement or at the very least acted with reckless disregard to Plaintiff's rights.

32. Defendants' knowledge and intent may be inferred from its conduct including the reckless disregard of Plaintiff's right (rather than actual knowledge of infringement), which suffices to warrant award of the enhanced damages.

33. As a direct and proximate result of each of the Defendants' infringement, Plaintiff has incurred actual damages in the form of license fees while Defendants have used Plaintiff's Copyrighted Photographs for their own commercial gain in an amount that will be determined at trial. Plaintiff may also elect to recover statutory damages pursuant to 17 U.S.C. § 504(c)(2) for willful infringement of up to \$150,000, but not less than \$30,000, for the copyright registration identified in **Exhibit A**, as available under the law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- A. statutory damages in the amount of \$150,000 per infringement for each Copyright Registration identified in the annexed **Exhibit A**, but in no case less than \$30,000 with respect to each infringement, or for such other amount as may be proper pursuant to 17 U.S.C. § 504(c);
- B. for Plaintiff's actual damage if Plaintiff so elects;
- C. attorneys' fees costs and disbursements in this action pursuant to 17 U.S.C. § 505 and 15 U.S.C. § 1117; and,
- D. for such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury of all issues so triable.

Dated: January 5, 2016

GARBARINI FITZGERALD P.C.

By: *Richard M. Garbarini*
Richard M. Garbarini
Richard M. Garbarini (RG 5496)
250 Park Avenue
7th Floor
New York, New York 10177
Telephone: (212) 300-5358
Facsimile: (347) 218-9479

Exhibit A

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

A handwritten signature in black ink that reads "Maria A. Pallante".

Register of Copyrights, United States of America

Registration Number

VAu 1-164-624

Effective date of registration:

August 21, 2013

Title

Title of Work: Concert photographs through August 15, 2013

Completion/Publication

Year of Completion: 2013

Author

■ **Author:** Larry Gene Philpot

Author,Created: photograph(s)

Work made for hire: No

Citizen of: United States

Domiciled in: United States

Year Born: 1953

Copyright claimant

Copyright Claimant: Larry Gene Philpot

12527 Winding Creek Lane, Indianapolis, IN, 46236

Certification

Name: Larry G. Philpot

Date: August 15, 2013

v-00026 Document 1 Filed 01/05/16 Page 1 of 1



Exhibit B



Select a Page: ▾

Headlines

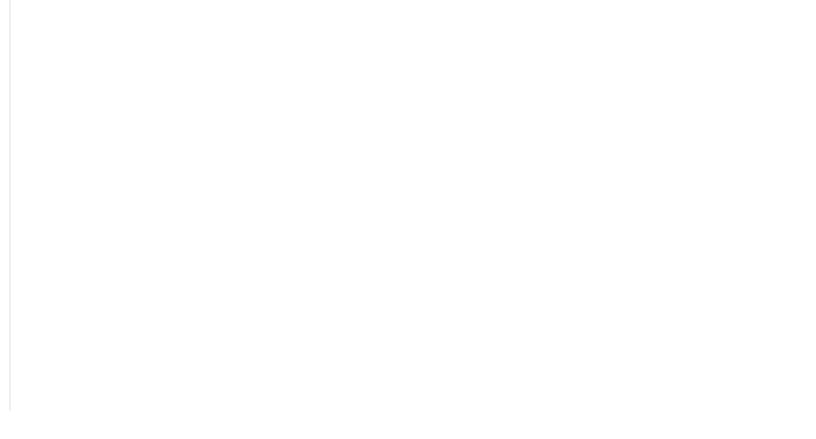
2 Comments

5 Surprising, Unexpected, & Horrifying Presidential Picks for 2016



[Anneliese Mahoney](#) | On November 25, 2013

I really like horror movies. And FX's American Horror Story is a weekly ritual for myself and my roommates. There's something about being scared through the dim glow of a screen that's refreshing: you get to be glad that you aren't actually experiencing the horror. And so today I decided to experience a different kind of horror...I googled potential 2016 presidential nominees barely a year after our last, extremely exhausting election.





Everyone knows who the frontrunners are—Hillary Clinton in blue, and Chris Christie in red. There's a whole big cast of characters as potential backups—Vice President Biden, Martin O'Malley, Rand Paul, Scott Walker, Ted Cruz, the list goes on and on. But for the sake of fun, let's take a look at some of the weird shout-outs I came across, on both sides, for potential 2016 nominees. Fair warning: this list will range from actual politicians who may have a shot, to bona fide crazy people.

Oh wait, isn't that the same thing?

5. Delaware AG Beau Biden



Courtesy: WikiMedia

I expected to see Joe's name on pretty much any presidential nominee list. I was not expecting a **second** Biden—the 44 year old Attorney General of Delaware. Beau is young, attractive, has a military background, and is overall a very attractive candidate for national politics. If his father doesn't run, he could be a contender. But is he ready? And do Democrats want to start yet another political dynasty, à la Clintons? After all, they've seen how well that's worked for the Republican party—Republicans haven't won a presidential election without a Bush on the ticket since 1981. Finally, and believe me, this is the most important question, is it possible for any Biden to be cooler than Joe?



Perfection

4. Rep Peter King (R-NY)



Pete King (R-NY) has actually [already](#) declared that he will be running for President in 2016. King has a pretty long history of crazy statements that render him a scary potential 2016 pick. Let's start with his claim that he's [kind of](#) a fan of torture, or at the very least, coercive interrogations (which a former Republican nominee, John McCain, has rallied against for years.) He also used to be a [supporter](#) of the Irish Republican Army, a known terrorist group. He has an extraordinary history of making offensive comments towards Muslims. In 2007, he [claimed](#) that, "that 85% of all mosques in the U.S. are controlled by 'extremist leadership.'" He has stated that Muslim-Americans aren't [actually](#) American. Immediately after the Boston Marathon bombing, he made a statement to the effect that [we need](#) to watch and put surveillance on all American Muslim communities.

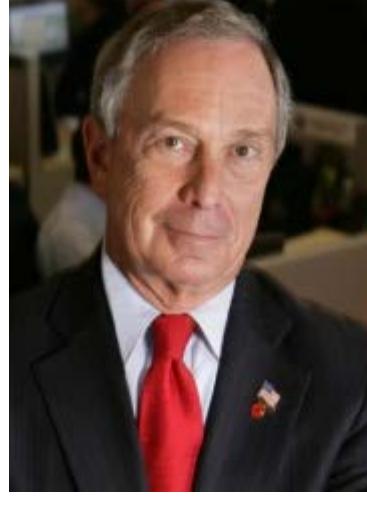




Oh, Pete King, could you be more offensive? Please don't try.

Pete King actually routinely slams the tea party, but still gets on this list for being a weird, creepy, hypocrite who I would really not like to see given a national platform.

3. Mayor Michael Bloomberg



Bloomberg has just finished up his last term as New York City mayor. His history is interesting; at various points in his life he has been a Democrat, a Republican, and now an Independent. While looking up 2016 speculation, I found both Democratic and Republican speculation—and in such a hostile partisan climate, it is extremely difficult to imagine that overlap. There has been speculation that Bloomberg would [run](#) in 2008 and 2012. Bloomberg wouldn't be so much a horrifying pick as much as he would be a fascinating one. Socially speaking, he's liberal, but fiscally conservative. Running a city like New York is very different than running an entire country, and some of the policies that he has instituted have been dramatically unpopular—everyone remember the soda ban? Any run, for any party, would be very interesting.





Most New Yorkers' reaction to the soda ban.

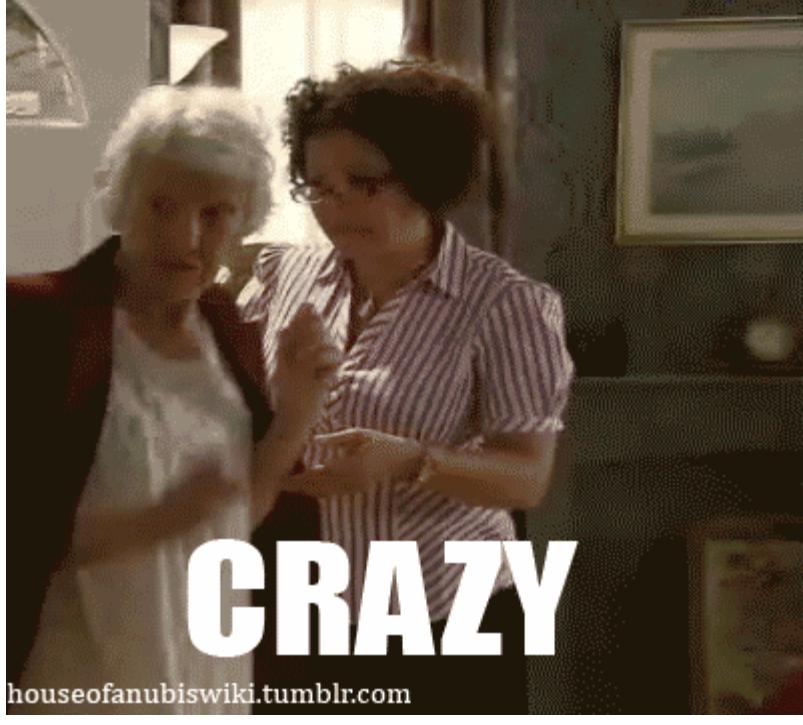
2. Former Rep. Allen West (R-FL)



Tea party darling and former Florida representative, Allen West, or as I like to call him, complete nut job. He is more likely to run for Rubio's senate seat, whether Rubio is there or not, but according to speculators Presidential run isn't [completely](#) out of the ballpark. I don't have room on this list to enumerate all the ways in which Allen West is off his rocker, but here are a couple highlights:

- One [time](#) when he said Joseph Goebbels, one of Hitler's right hand men, would be proud of Democrats.
- [Anyone](#) who supports Obama is a threat to the gene pool.
- Liberal [women](#), "have been neutering American men and bringing us to the point of this incredible weakness —[we need] to let them know that we are not going to have our men become subservient."
- He [claimed](#) well respected news outlet Al Jazeera tried to kidnap him.

Shall we all say it together?



1. Ted Nugent



Ted Nugent has said that people are asking him to run and that he's considering it. In a Washington Post profile he [said](#), ""Things are just so wrong in the country now. And I know that my answers would make things wonderful, unless you just refuse to produce, and then I'd recommend that you move to Canada. Or Illinois." Oh thanks, Ted, I forgot Illinois wasn't a part of the US. I think we should have a new rule: if you have been investigated by the Secret Service for threatening a current President, you shouldn't be able to run for that same office. Before the 2012 election, he [claimed](#) that "he would be dead or in jail" this time next week if Obama won reelection. Yet, people still want him to run for President—this "Ted Nugent for President" [Facebook](#) page has over 246,000 likes.





Ted Nugent? NO!

Well friends, no matter what, we're in for an exciting ride in 2016. But, can we please not talk about it for real for at least another year?

Featured Image Courtesy of: [[Flickr](#)]

TAGS[2016](#)[Allen West](#)[Beau Biden](#)[Elections](#)[Michael Bloomberg](#)[Pete King](#)[President](#)[Ted Nugent](#)**PREVIOUS STORY**[Crime in America](#)**NEXT STORY**[Need a Gun? Just Print One Out](#)

Related Posts



Join the Jury: Most Americans Say, “Fire Every Member of Congress.” Do You?...

October 18, 2013 | Winston Cutler





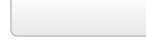
or

Name

Email

Not published

Comment

**2 Replies**

0 Comments

2 Tweets

0 Facebook

0 Pingbacks

last reply was 1 month ago

@LawStreetMedia

1 month ago

The Future of America: 5 Surprising, Unexpected, and Potentially Horrifying Presidential Picks for 2016:
<http://t.co/gR8R5LhAYO>

[reply](#)

@JenkinsAuthor

1 month ago

<http://t.co/luhtT0aC93> Whoa! Five potentially horrifying presidential picks for #2016 @LawStreetMedia.

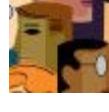
[reply](#)

FOLLOW US

[Popular](#)[Recent](#)[Facebook](#)

Forum Film Festival Series: Part 2 – The Invisible War

9838 Views



Should Affirmative Action Laws Be Repealed?

5437 Views



Guns, Whiteboards, and the Mentally-ill: How to Cure Campuses From Mass Shootings

2508 Views



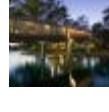
Hoop Dreams: Why the NCAA Doesn't Care Who Was Shooting in the Gym

2135 Views



Law Reviews: Losing Steam, But Who's to Blame?

1386 Views



Crime in America: Top 10 Safest Cities Over 200,000

1059 Views

TAGS

Abortion	California	Capitalista Careers	Civil Liberties	Congress
Conservatism	Copyright	Edward Snowden	Facebook	FBI
Feminism	Florida	GOP	Immigration	Intellectual Property
Job Hunting	Jobs	job search	Job Tips	Law
Lawsuit	Legal	Lists	New York	New York City
NSA	Obamacare	Police	Politics	Privacy
Racism	Rape	Regulation	Republicans	SCOTUS
Senate	Sexism	Supreme Court	Technology	Texas
Trial	United States	Women		

About Us >

Contact Us >

Founding Team >

Newsroom >

Advertise on Law Street >

Join Our Team >

LAW | STREET

FOLLOW US



Disclaimer >

Notice >

Privacy Policy >

Terms of Service >

© 2013 Law Street Media, LLC.

"Law Street" and "Law Street Media" are trademarks of Law Street Media, LLC. All rights reserved.